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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 1388.

THE UNITED STATES, APPELLANT,

vs.

THE STATE OF LOUISIANA.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 12, 1888.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

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THE UNITED STATES, APPELLANT,

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APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.

STATE OF LOUISIANA
vs.
THE UNITED STATES. } No. 15543.

I.—*Petition.*—*Filed Feb'y* 1, 1887.

The honorable the judges of said court:

The petition of the State of Louisiana respectfully shows, as follows, to wit:

That Section V of an act of Congress entitled "An act to enable the people of the Territory of Orleans to form a constitution and State government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes," approved February 20th, 1811, Vol. II, S. L., p. 641, reads as follows, to wit: "And be it further enacted, that five per centum of the net proceeds of the sales of the lands of the United States, after the first day of January, shall be applied to laying out and constructing public roads and levees in the said State as the legislature thereof may direct."

II.

That by and under the terms of said act there is now due your petitioner the sum of twenty-six thousand eight hundred and forty-five dollars and sixty-five cents, which sum has been duly ascertained and certified according to law; but instead of being paid over to your petitioner, as by legal right it should be, the same, on March 29th, 1886, and February 11th, 1884, were credited without lawful authority upon
2 certain bonds, alleged to have been issued by your petitioner and claimed to be held by the defendants as an investment of certain Indian trust funds.

III.

And your petitioner further shows, that by Sections I and II of the act of September 28th, 1850, IX S. L., p. 519, entitled "An act to enable the State of Arkansas and othes States to reclaim the swamp lands within their limits," it is enacted that the Secretary of the Interior shall make out lists and plats of all swamp and overflowed lands made unfit thereby for cultivation, which shall remain unsold at that date, and grant them to the State. Section II thereof provides: "That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the governor of the State of Arkansas, and, at the request of said governor, cause a patent to be issued to the State therefor; and on that patent the fee-simple to said lands shall rest in the said State of Arkansas, subject to the disposal of the legislature; provided, however, that the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid."

And by Section IV of the same act, its provisions are extended to and their benefits conferred upon each of the other States of the Union in which swamp or overflowed lands are situated.

These lands, not being definitely located, were, in many instances, innocently taken up by individuals who received title therefor from the General Land Office; and to remedy this difficulty, Congress enacted the act of March 2d, 1855, X S. L., 634. By Section II thereof it is pro-
3 vided: "That upon due proof by the authorized agent of the State or States, before the Commissioner of the General Land Office, that any of the lands purchased were swamp lands, within the true intent and meaning of the act aforesaid, the purchase money shall be paid over to the said State or States;" that by and under these provisions of said laws there is now legally due and owing to your petitioner the sum of nine hundred and five dollars, which said sum has been duly and legally ascertained and certified; but instead of being paid over to your petitioner, as by legal right it should be, the same was credited, on September 9th, 1886, upon certain bonds alleged to have been issued by your petitioner and claimed to be held by the defendant as an investment of certain Indian trust funds.

IV.

That demand has been duly made upon the Treasury of the United States for the payment of the sums due to the State of Louisiana, as alleged in paragraphs II and III hereof, but the same has been refused upon the ground and for the reason as assigned; that the same has been duly credited to the State of Louisiana, for and on account of an alleged liability upon certain bonds which the defendant claims were issued by the plaintiff and held by the defendant as an investment of certain Indian trust funds, as hereinbefore set out.

V.

That these sums, duly ascertained and found due the State of Louisiana, are trust funds to be devoted to specific purposes, under the express provisions of the acts granting them to the State.

VI.

That no assignment or transfer of said claim, or any part thereof, or interest therein, has been made, except as stated herein.

4 Wherefore your petitioner prays judgment for the sum of twenty-seven thousand seven hundred and fifty dollars and sixty-nine cents.

EARLE & PUGH,
Attorneys for State.

STATE OF LOUISIANA,
City of New Orleans, ss:

Before me, a notary public, of said State, in and for said city, personally came, this day of January, 1887, S. D. McEnery, who is personally known to me, and, being first duly sworn, deposes and says, that he is the governor of the State of Louisiana, and that he has read the annexed petition, and that the matters and things therein set out, as of his own

knowledge, are true, and that the others therein set out he believes to be true.

S. D. McENERY.

Sworn to and subscribed before me this 28th day of January, 1887.
[SEAL.] B. F. BRYAN,
Notary Public.

5 In the Court of Claims.

STATE OF LOUISIANA
versus
THE UNITED STATES. } No. 15777.

II.—Petition.—Filed Oct. 10, 1887.

The honorable judges of said court:

The petition of the State of Louisiana respectfully shows as follows, to wit: That by sections 1 and 2 of the act of September 28th, 1850 (IX S. L., p. 519), entitled "An act to enable the States of Arkansas and other States to reclaim the swamp lands within their limits," it is enacted that the Secretary of the Interior shall make out lists and plats of all swamp and overflowed lands made unfit thereby for cultivation, which shall remain unsold at that date, and grant them to the State. Section 2 thereof provides as follows:

"That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described as aforesaid and transmit the same to the governor of the State of Arkansas, and at the request of said governor cause a patent to be issued to the State therefor; and on that patent the fee-simple to said lands shall rest in the said State of Arkansas, subject to the disposal of the legislature: Provided, however, that the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid."

By section IV of the same act its provisions are extended to
6 and their benefits conferred upon each of the other States of the Union in which swamp and overflowed lands are located.

II.

These lands, not being definitely located, were in many instances innocently taken up by individuals, who received title from the General Land Office, and Congress, to remedy this difficulty, enacted the statute of March 2d, 1855, X S. L., p. 634. By Section II thereof it is provided "that upon due proof by the authorized agent of the State or States, before the Commissioner of the General Land Office, that any of the lands purchased were swamp lands within the true intent and meaning of the act aforesaid, the purchase money shall be paid over to the said State or States;" that by and under the provisions of said laws there is now legally due and owing to your petitioner the sum of three thousand three hundred and thirty dollars ($3,330.00), which said sum has been duly and legally ascer-

tained and certified, but instead of being paid over to your petitioner, as by legal right it should be, the same was credited May 2d and May 2d, 1887, upon certain bonds alleged to have been issued by your petitioner and claimed to be held by the defendant as an investment of certain Indian trust funds.

III.

That demand has been duly made upon the Treasury of the United States for the payment of the sums certified as due the State of Louisiana, as alleged in Paragraph II, but the same has been refused upon the ground and for the reason assigned—that the amount has been credited to the State of Louisiana for and on account of an alleged indebtedness of the State upon certain bonds which the defendant claims were issued
7 by the plaintiff and held by the defendant as an investment of certain Indian trust funds, as hereinbefore set out.

IV.

That these sums, duly ascertained and found due the State of Louisiana, are trust funds, to be devoted to a specific purpose named in the act granting them to the State.

V.

That no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made except as stated in this petition.

Wherefore your petitioner prays judgment for the sum of three thousand three hundred and thirty dollars ($3,330.00).

EARLE & PUGH,
Attorneys for Petitioner.

STATE OF LOUISIANA,
City of New Orleans:

Before me, a notary public of said State, in and for said city, personally came, this 4th day of October, 1887, S. D. McEnery, gov. of La., who is known to me, and being duly sworn, deposes and says: That he is the governor of the State of Louisiana, and that he has read the annexed petition, and that the matters and things therein set out as of his own knowledge are true, and that the others therein averred he believes to be true.

[SEAL.] S. D. MCENERY,
Governor of Louisiana.

B. F. BRYAN,
Not. Pub.

8 III.—*General Traverse.—Filed Nov.* 29, 1887.

And now comes the Attorney-General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

ROBERT A. HOWARD,
Assistant Attorney-General.

9 In the Court of Claims.—December term, 1887–8.

THE STATE OF LOUISIANA
v.
THE UNITED STATES. } No. 15543.

IV.—*Defendant's special plea of set-off.—Filed Dec'r 29th*, 1887.

The defendant, for special answer to the claimant's amended petition, by way of set-off, says that at the time of the filing of the said petition herein, and long prior thereto, the said claimant was, and is now, indebted to the defendant in the sum of $40,580.41, the amount of interest which accrued, commencing in May, 1879, and terminating May 2, 1887, on State stocks and State bonds, and also on Indian trust-fund bonds.

Wherefore the defendant prays that $40,580.41 may be set off against the petitioner's claim herein, and that the defendant may have other and proper relief.

ROBT. A. HOWARD,
Assistant Attorney-General.
By H. J. MAY,
Assistant Attorney.

DECEMBER 27, 1887.

10 Court of Claims.

STATE OF LOUISIANA
vs.
THE UNITED STATES. } 15543.

V.—*Amended petition.—Filed Jan'y 5*, 1888.

Now comes the plaintiff, by Earle & Pugh, and moves the court for leave to amend the original petition in the following particulars, to wit: Strike out in paragraph 2 "twenty-six thousand eight hundred and forty dollars and sixty-five cents," and in lieu thereof insert "thirty-six thousand four hundred and thirty-nine dollars and sixty-nine cents." In the same paragraph strike out "on March 29th, 1886, and Feby. 11th, 1884," and in lieu thereof insert "on May 18th, 1879, by wt. No. 892, as follows: Interest on State stock, $12,210.00; part payment of principal, $1,392.71. June 8th, 1882, by wt. No. 1069, as follows: Interest on State stock, $63.47. February 7th, 1884, by wt. 418, as follows: Interest on State stock, $22,773.51."

So that the paragraph after being amended will read as follows:

That by and under the terms of said act there is now due your peti-

tioner the sum of $36,439.69, which sum has been duly ascertained and certified according to law, but instead of being paid over to your petitioner, as by legal right it should be, the same on May 18th, 1879, by wt. No. 892, as follows: Interest on State stock, $12,210.00; part payment of principal, $1,392.71. June 8th, 1882, by wt. No. 1069, as follows: Interest on State stock, $63.47. February 7th, 1884, by wt. No. 418, as follows: Interest on State stock, $25,773.51 were credited without
11 legal authority upon certain bonds alleged to have been issued by your petitioner and claimed to be held by the defendant as one investment of certain Indian trust funds.

I.

In paragraph 3 strike out "905.00," and in lieu thereof insert "$3,803.02"; also strike out "September 9th, 1886," and insert in lieu thereof "on March 26th, 1886, by wt. No. 3913 as follows: $302.32 interest on State stock; March 26th, 1886 by wt. No. 3914 as follows: $3,500.70," so that the part amended may read as follows. That by and under the provisions of said laws there is now legally due and owing to your petitioner the sum of three thousand eight hundred and three dollars and two cents ($3,803.02), which said sum has been duly and legally ascertained and certified, but instead of being paid over to your petitioner, as by legal right it should be, the same was credited on March 26, 1886, by wt. No. 3913 as follows: $302.32 as follows: Interest on State stock, March 26, 1886, by wt. No. 3914 as follows: Interest on State stock $3,500.70, upon certain bonds alleged to have been issued by your petitioner and claimed to be held by the defendant as investment of certain Indian trust funds.

EARLE & PUGH,
Att'y for Cl'm't.

12 Court of Claims.

STATE OF LOUISIANA
vs.
THE UNITED STATES. } No. 15543.

VI.—*Amended petition.—Filed Jan.* 9, 1888.

Now comes the plaintiff, by Earle and Pugh, and moves the court for leave to amend the amended petition in the following particulars, wit: In Paragraph VI strike out "twenty-seven thousand seven hundred and fifty dollars and sixty-nine cents," and in lieu thereof insert: "forty thousand two hundred and forty-two dollars and seventy-one cents ($40,242.71)."

So that the prayer for judgment will read: "Wherefore your petitioner prays judgment for the sum of forty thousand two hundred and forty-two dollars and seventy-one cents ($40,242.71)."

EARLE & PUGH,
Atty's for Pl'ff.

13 Court of Claims.

STATE OF LOUISIANA
vs.
THE UNITED STATES. } No. 15777.

VII.—*Amended petition.*—*Filed Jan'y* 9, 1888.

Now comes the plaintiff, by Earle & Pugh, and moves the court for leave to amend the petition in the following particulars, to wit: In Paragraph II strike out "May 2nd and May 2nd, 1887," and in lieu thereof insert: "September the 9th, 1886, $1,110.00; May 2nd, 1887, $787.91; May 2nd, 1887, $942.50; May 4th, 1887, $489.59, aggregating $3,330.00."

So that the paragraph will read: That by and under the provisions of said laws there is now legally due and owing to your petitioner the sum of three thousand three hundred and thirty dollars, which said sum has been duly and legally ascertained and certified, but instead of being paid over to your petitioner, as by legal right it should be, the same was credited, September the 9th, 1886, $1,110; May 2nd, 1887, $787.91; May 2nd, 1887, $942.50; May 4th, 1887, $489.59, aggregating $3,330, upon certain bonds alleged to have been issued by your petitioner, and claimed to be held by the defendant as an investment of certain Indian trust funds.

EARLE & PUGH,
Atty's for Pl'ff.

14 Court of Claims.

STATE OF LOUISIANA
vs.
THE UNITED STATES. } No. 15543 and 15777.

VIII.—*Motion to consolidate.*—*Filed and allowed Jan.* 19, 1888.

Now comes the plaintiff's attorney, and, by agreement of the Government att'y, moves the court that the cases number 15543 and 15777 as now submitted be consolidated and tried as one case. They involve the same questions of law and the facts are based upon one record.

EARLE & PUGH,
Att'ys for State.

No objection.

H. J. MAY,
Ass't Att'y.

Allowed.

WM. A. RICHARDSON,
Chief-Justice.

Jan. 19, '88.

15 IX.—*Findings of fact and conclusion of law.*

[Nos. 15543 and 15777. Two cases consolidated and tried as one.]

STATE OF LOUISIANA v. THE UNITED STATES.

IX.—FINDINGS OF FACT.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I.

FIVE PER CENT. FUND.

Of the 5 per cent. fund accruing to the State of Louisiana under the act of Congress approved February 20, 1811 (2 Stat. L., 641), after deducting all sums paid to the State and the amount embraced in a certain judgment rendered by the Court of Claims in No. 15295, Louisiana v. United States (22 C. Cls. R., 284), there remains due from the United States to said State, as credited on the books of the Treasury Department, the following sums:

May 8, 1879	$13,602.71
June 8, 1882	63.47
February 7, 1884	22,773.51
Total of 5 per cent. fund	36,439.69

SWAMP-LAND FUND.

Of the swamp-land fund accruing to said State under the acts of September 28, 1850 (9 Stat. L., 519), and of March 2, 1855 (10 Stat. L., 634), after deducting all sums paid to the State and the amount embraced in said judgment, there remains due from the United States to said State, as credited on the books of the Treasury Department, the following sums:

May 26, 1886 (case No. 15543)	$3,803.02
September 9, 1886 (case No. 15777)	1,110.00
May 2, 1887 (case No. 15777)	1,730.41
May 4, 1887 (case No. 15777)	489.59
Total swamp-land fund	7,133.02
Total of both funds	43,572.71

II.

The First Comptroller of the Treasury, at the times and dates stated in Finding I, admitted and certified the sums aforesaid to be due to the said State on account of the 5 per cent. fund and the indemnity for swamp lands purchased by individuals within said State, but directed the
16 said amounts to be credited on moneys due the United States as statedin Finding III. It does not appear that the State authorities had knowledge of this proceeding.

III.

COUNTER-CLAIM.

The United States own coupon bonds issued by the State of Louisiana amounting to $37,000, payable in 1894, known as the Indian trust bonds. They also hold and own overdue coupons attached to these bonds, representing the interest from May 1, 1874, to May 1, 1887, amounting to $29,970; additional interest from May 1, 1887, to November 1, 1887 (falling due after the last petition was filed), amounting to $1,110. Total interest to November 1, 1887, $31,080.

CONCLUSION OF LAW.

Upon the foregoing findings of facts the court decides, as conclusions of law, that the claimant is entitled to recover:

For the swamp-land indemnity fund	$7,133.02
For the 5 per cent. fund	36,439.69
Total	43,572.71

And that the counter-claim should be dismissed without prejudice.

X.—*Opinion.*

SCOFIELD, J., delivered the opinion of the court:

These cases as consolidated embrace two claims; one arising under the act of February 20, 1811 (2 Stat. L., 641), known as the 5 per cent. fund, amounting to $36,439.69; the other arising under the acts of September 28, 1850 (9 Stat. L., 519), and March 2, 1855 (10 Stat. L., 634), known as the swamp-land indemnity fund, amounting to $7,133.02. There is no contest about these amounts.

The defendants contend that the court has no jurisdiction, under section 1069 of the Revised Statutes, over so much of the claim as was deposited in the Treasury more than six years before the petition was filed, and that the remainder of the claim is covered by a counter-claim, consisting of overdue coupons on bonds issued by the claimant.

The amount of the counter-claim and the claimant's liability thereon are not contested; nor is it denied that the item of $13,602.71 was deposited in the Treasury to the credit of the State more than six years before the petition was filed.

The claimant, however, meets these defenses with the allegation that the funds claimed are trust moneys, to be held for special purposes, at first by the United States and by the State after transfer.

The origin and purpose of the 5 per cent. fund is found in Section V of the act of February 20, 1811 (2 Stat. L., 641), which provides:

"That five per centum of the net proceeds of the sales of the lands of the United States, after the first day of January, shall be applied to laying out and constructing public roads and levees in the said State, as the legislature thereof may direct."

17 The origin and purpose of the swamp-land fund appears by the act of September 28, 1850 (9 Stat. L., 519) entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands

within their limits." This act, after directing the manner of conveying such lands to the States, provides:

"That the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid."

Some of the land included in the foregoing act was purchased from the United States by individuals through mistake of the Land Office. Thereupon the act of March 2, 1855 (10 Stat. L., 634), was passed and provided:

"That upon due proof by the authorized agent of the State or States, before the Commissioner of the General Land Office, that any of the lands purchased were swamp lands within the true intent and meaning of the act aforesaid, the purchase money shall be paid over to the said State or States."

These statutes indicate very clearly that these two funds are held in trust, to be applied, the one "to laying out and constructing public roads and levees," and the other "to reclaiming swamp lands by means of levees and drains." (Emigrant Co. v. Wright County, 97 U. S. R., 339; Same v. County of Adams, 100 U. S. R., 66; Mills County v. R. R. Co., 107 U. S. R., 564; State of Louisiana v. The United States, 22 C. Cls., R., 284.)

Whether the courts have power to enforce this trust against ingenious devices of the State for its diversion, and whether Congress has power to revoke or annul it, are not questions for our consideration. There is no allegation that Congress has attempted to disavow or annul the trust, nor that the State is attempting to misapply the funds. The United States having executed their part of the trust by the sale of the lands and by a calculation and separation of the amount belonging to the trust, and by depositing the same in the Treasury to the credit of the State (their successor in the trust), it became the duty of the executive officers temporarily charged with the custody of the funds to hand them over to the succeeding trustee. The credit given to the State on its bonded indebtedness to the United States in the Treasury Department was without authority of law. Neither Congress nor the State had given consent to such a misapplication of the funds.

The trust being established, it follows that these funds are freed from the counter-claim, and that no part of them is barred by the statute of limitations.

Judgment will be entered in the sum of $43,572.71.

18 XI.—*Final judgment.*

At a Court of Claims held in the city of Washington, D. C., on the 30th day of January, A. D. 1888, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the claimant, and do order, adjudge, and decree that the said The State of Louisiana do have and recover of and from the United States the sum of forty-three thousand five hundred and seventy-two $\frac{51}{100}$ dollars ($43,572.71).

19 In the Court of Claims of the United States. Term, 1887–8.

STATE OF LOUISIANA
vs.
THE UNITED STATES. } No. 15543 and 15777.

XII.—*Defendant's application for appeal.*

From the judgment rendered in the above-entitled cause on the 30th day of January, 1888, in favor of claimant, the defendants, by their Attorney-General, on the 27th day of February, 1888, make application for and give notice of an appeal to the Supreme Court of the United States.

ROBERT A. HOWARD,
Asst. Attorney-General.

Filed Feb. 27th, 1888.
Allowed in open court:

WILLIAM A. RICHARDSON,
Chief-Justice.

20 XIII.

In the Court of Claims.

THE STATE OF LOUISIANA
vs.
THE UNITED STATES. } No. 15543 and 15777 consolidated.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the court, of the final judgment of the court, of the application of defendants for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 10th day of March, A. D. 1888.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) No. 1388. The United States, appellant, vs. the State of Louisiana. Court of Claims. Filed March 12, 1888.

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In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES, APPELLANT,
vs.
THE STATE OF LOUISIANA.
No. 1025.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES, APPELLANT,
vs.
THE STATE OF LOUISIANA. } No. 1025.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The claim in this case consists of two classes of items.

First. The 5 per cent. of the net proceeds of the sales of the public lands within the limits of the State of Louisiana from July 1, 1882, to June 30, 1886, amounting to $47,530.79. (Rec. 8)

This claim is founded on the provisions of the act of February 20, 1811 (2 Stat. L., 641). The lands were sold, and the claim, so far as this item is concerned, accrued within six years previous to the filing of the petition.

Second. The indemnity for swamp lands purchased by individuals, the proceeds of which were by statute directed

to be applied, so far as necessary, to reclaiming such lands in the State of Louisiana by means of levees and drains. The items in this part of the claim are founded on the acts of Congress of September 28, 1850 (9 Stat. L., 519) now section 2479, Revised Statutes, and March 2, 1855 (10 Stat. L., 634), which is extended by act March 3, 1857 (11 Stat. L., 251). (Rec. 8.)

These lands were all sold in 1856 and in years prior thereto, and the amount which remains unpaid to the petitioner, as shown by the Comptroller's certificate, is $23,855.04. The claim, therefore, so far as this item is concerned, accrued more than six years prior to the filing of the petition, and is barred by section 1069, Revised Statutes.

The petition herein was filed September 20, 1886.

The field notes of the public surveys of lands in Louisiana, returned to the General Land Office, were adopted as the proof of the swampy character of such lands, in 1885 and 1886, no other proof of that fact having been furnished by the agent of such State.

The First Comptroller of the Treasury admitted and certified the respective amounts due to the claimant on account of swamp and overflowed lands under the acts of September 20, 1850 and March 2, 1855, but directed the same to be placed to the credit of said State on account of direct taxes under the act of August 5, 1861. (12 Stat. L., 292.) (Rec. ; Find. IV.)

The same disposition was made of the amount due the State on account of the five per cent. fund for the sale of public lands. (Rec. 3; Find. IV.)

The appellant's attorney filed a motion in the Court of

Claims to dismiss the cause for want of jurisdiction, because the said court had neither original nor concurrent jurisdiction under the Constitution and laws of the United States to hear and determine a cause in which a State is a party in a suit against the United States, but the motion was overruled. (Rec., 3.)

The appellant, by attorney, filed a special plea, by way of set-off, in the Court of Claims, in accordance with the ruling and certificate of the First Comptroller. (Rec. 7.)

A motion to dismiss was also interposed, questioning the jurisdiction of the court as to the claims for indemnity for the sale of swamp lands to individuals, because the same were not presented to the court within six years after they first accrued. (Rec. 7.)

The court overruled the motion to dismiss for want of jurisdiction, such items of the claim as had accrued more than six years before the petition had been filed; dismissed the set-off or counter-claim, and entered judgment for the State of Louisiana for $71,385.83. (Rec. 13.)

From these rulings and the final judgment this appeal has been taken to the Supreme Court. (Rec. 13.)

THE STATUTES.

The acts of Congress that may be considered in determining this case are as follows:

An act authorizing the people to form the State government of Louisiana; also authorizing five per centum of the net proceeds of sales of lands of the United States, after January 1, 1812, to be applied to constructing roads and levees, approved February 20, 1811 (2 Stat. L., 641, 643).

Under this statute the Comptroller admits and certifies to be due to the claimant, arising from the five per cent. fund, $47,530.79.

An act to enable Arkansas and other States to reclaim swamp lands within their limits, approved September 28, 1850 (9 Stat. L., 519, 520); now section 2479, Revised Statutes.

An act for the relief of purchasers and locators of swamp and overflowed lands, approved March 2, 1855. (10 Stat. L., 634.)

An act continuing in force the acts of September 28, 1850 (9 Stat. L., 519), and of March 2, 1855, approved March 3, 1857, saving the rights of locators and purchasers thereunder. (11 Stat. L., 251.)

Under these three statutes the certificates in the Interior Department, and also the certificates of the First Comptroller, admitting the aggregate amount of $23,855.04 to be due the claimant for indemnity for swamp lands, are made.

An act to provide increased revenues, &c., approved August 5, 1861 (12 Stat. L., 292), comes next. Upon this act the appellant relies for its set-off.

Section 1059, Revised Statutes, under which the Court of Claims, it is asserted, obtains jurisdiction of the claim.

Section 1069, Revised Statutes, upon which appellant relies to sustain the motion to dismiss a part of the claim for want of jurisdiction, the same not having been filed within six years after it first accrued. (Act of March 3, 1875, 18 Stat. L., 470.)

The above appear to be all the statutes that relate to the matters in controversy on either side of this case.

ASSIGNMENTS OF ERROR.

Errors are assigned on the part of the appellant as follows:

*(1) The Court of Claims erred in overruling the motion to dismiss the cause for want of jurisdiction, on the ground of objection the said court has neither original nor concurrent jurisdiction under the Constitution and laws of the United States to hear and determine a cause in which a State is a party in a suit against the United States. (Rec. 3).

(2) The Court of Claims erred in refusing to sustain the motion to dismiss certain items of the claim founded upon the provisions of the acts of Congress approved September 28, 1850, and March 2, 1855, entitled "An act for the relief of purchasers and locators of swamp lands," (9 Stat. L., p. 515; 10 *ibid.*, p. 634), for the reason that the same were not presented to the Court of Claims within six years after they first accrued. They are as follows: Report No. 45789, for $1,340.84; Report No. 45790, for $3,500.70; Report No. 45791, for $4,758.24; Report No. 45792, for $5,837.95; Report No. 46035, for $6,448.71; Report No. 43036, for $1,350.41; Report No. 46290, for $4,421.21; Report No. 46356, for $2,437.14. (Rec. 7.)

* NOTE.—It is intended that the argument under this assignment, and also under assignments numbered 4, 5, and 6 herein, shall apply to like assignments in the cases of the *United States, appellant,* v. *The State of Alabama,* No. 1058, and *United States, appellant,* v. *The State of Mississippi,* No. 1059, submitted at the present term under rule 20 of the court.

(3) The Court of Claims erred in rendering a final judgment in favor of the State of Louisiana for $23,855.04, on account of indemnity for swamp lands purchased by individuals prior to March 3, 1857, under the acts of September 28, 1850 (9 Stat. L., 579), and March 2, 1855 (10 Stat. L., 634), for the reason that exclusive jurisdiction was conferred on the Commissioner of the General Land Office by section 2 of the act of March 2, 1855, *supra*, to hear and determine the said claim, and upon due and satisfactory proof to him made by the State or its authorized agent to direct the same to be paid. (Rec. 13.)

(4) The Court of Claims erred in dismissing the special plea of set-off or counter-claim for $71,385.83. (Rec. 13.)

(5) The Court of Claims erred in rendering a final judgment in favor of the State of Louisiana for the sum of $71,385.83. (Rec. 13.)

(6) The Court of Claims erred in not dismissing the petition and the cause of the State of Louisiana, and in not rendering a final judgment to that effect in favor of the United States. (Rec. 13.)

BRIEF OF ARGUMENT.

I.

The question raised by the first assignment of error is controlled by section 2, Article III, of the Constitution of the United States, and the statutes enacted by Congress in pursuance thereof.

The Constitution provides in section 2, among other things, as follows:

> * * * In all cases affecting ambassadors, other public ministers, and consuls, *and those in which a State shall be a party*, the Supreme Court shall have *original jurisdiction*.

Congress almost immediately passed the Judiciary act of 1789 (1 Stat. L., 73), the thirteenth section of which is now section 687, Revised Statutes. It is provided therein that—

> The Supreme Court shall have *exclusive* jurisdiction of all controversies of a civil nature *where a State is a party*, except between a State and its citizens, or between a State and citizens of other States, or aliens, in which latter case it shall have *original*, but not *exclusive*, jurisdiction.

As the case at bar is not included within any of the exceptions, it follows that it is one in which the Supreme Court has exclusive jurisdiction unless some statute can be produced showing that Congress has granted concurrent jurisdiction to the Court of Claims to hear and determine the same.

In United States *v.* Ravara (2 Dall., 298), it is held:

> That, although the Constitution vests in the Supreme Court *an original* jurisdiction in cases like the present, it does not preclude the Legislature from exercising the power of vesting *a concurrent* jurisdiction in such inferior courts as might by law be established.

The court in that case had such concurrent jurisdiction. A consul and not a State was a party, and the quo-

tation is made for the purpose of showing concurrent jurisdiction must be granted by Congress.

Such grant of concurrent jurisdiction is absolutely denied to any court by section 687, Revised Statutes, where a State is a party, and the exclusive jurisdiction in such cases reserved to the Supreme Court, except as provided therein, and this case does not fall within either of the exceptions. It is not a suit between a State and its citizens, nor between a State and citizens of other States, nor with an alien. If it were within the exceptions, this court would be equally without jurisdiction, because Congress has never by statute conferred concurrent jurisdiction upon the Court of Claims to hear and determine the class of cases excepted from the exclusive jurisdiction of the Supreme Court.

Congress has not expressly nor impliedly repealed section 687 of the Revised Statutes, and it may be properly applied in bar of the jurisdiction of the Court of Claims.

For the purposes of this suit the United States may be considered as a foreign state in regard to the controversy with the State of Louisiana.

Mr. Spear, in his law on the Federal Judiciary, says:

> The controversies in which the State is a party, and in which the jurisdiction of the Supreme Court is both original and exclusive, are such as exist between two or more States of the Union, or between a State of the Union and a foreign state. These controversies are included in the judicial power of the United States as granted by the Constitution, and are not included in the exceptions to the original and exclusive jurisdiction of the Supreme Court made by the statute. Hence, in these cases, the jurisdiction

> is both original and exclusive. No concurrent jurisdiction is given to any other court of the United States (p. 252.)

Mr. Spear, in the work already cited, has fully discussed this question, and cited all the authorities relating thereto up to the date of the publication of his book (pp. 247–255.)

In *Ames* v. *Kansas* (111 U. S. Rep., 459–472), in an opinion by Mr. Chief-Justice Waite, the question is discussed, and the authorities reviewed.

In reference to the enactment of Congress it is said (p. 465):

> Thus the original jurisdiction of the Supreme Court was made concurrent with any other court to which jurisdiction might be given in suits between a State and citizens of other States or aliens. No jurisdiction was given in such cases to any other court of the United States, and the practical effect of the enactment was, therefore, to give the Supreme Court exclusive original jurisdiction in suits against a State begun without its consent, *and to allow the State to sue for itself in any tribunal that could entertain its case.*

In this case the Supreme Court held, that concurrent jurisdiction was first conferred on the circuit courts of the United States by *Act of March* 3, 1875 (18 Stat. L., 470).

> The judicial power of the United States exists under the Constitution, and Congress alone is authorized to distribute that power among the courts. (Ib., 472.)

It will be observed, therefore, that in conferring concurrent jurisdiction in this respect on the courts of the

United States, the Court of Claims has not been included It had been organized by statute, with jurisdiction to render final judgments, long before the passage of the act. of March 3, 1875, *supra*. It most assuredly will not be urged that, under the Constitution, it has original jurisdiction of the claim and claimant in this suit. It will no doubt be admitted that concurrent jurisdiction with the Supreme Court has not been conferred by Congress upon the Court of Claims over the claimant or the claim. The Court of Claims is an inferior tribunal created by law under the Constitution, with peculiar jurisdiction and specific powers. It is an anomalous court when compared with other inferior tribunals of the United States.

Inasmuch as the jurisdiction taken by the Court of Claims of the State of Louisiana, or its claim, is not concurrent, it must be original. In fact, if said court has any jurisdiction whatever over the claim or the claimant it is conferred by section 1059, Revised Statutes, and must necessarily be original; but appellant claims and asserts that such original jurisdiction of a suit in which a State is a party, if it exists at all, is reserved to the Supreme Court under the section of the Constitution above quoted.

In the opinion of the court (Rec., 3), overruling the motion to dismiss for want of jurisdiction, Ames *v.* Kansas (111 U. S. R., 449) is first briefly reviewed. The chief question in the case is that of the removal of a case from a State court to the United States circuit court under the act of March 3, 1875 (18 Stat., 470). The constitutional provision, the judiciary act, and the decisions of the courts are cited and examined, but there is nothing in the opinion

or decision that relates to the question now under consideration otherwise than, probably, by analogy.

The acts of Congress therein referred to are in relation to the concurrent jurisdiction of the circuit courts. No such jurisdictional acts are to be found in relation to the Court of Claims. We have made extracts from the opinion in this case (*supra*) for certain purposes, but not with the intention of showing that a construction of the act of March 3, 1875, has anything to do, unless by analogy, with the construction of what is now section 1059 of the Revised Statutes.

The Court of Claims also quotes in the opinion (Rec., 4), what is said by Mr. Justice Bradley in *Russell* v. *United States* (13 Wall., 664) about "giving to *parties* the privilege of suing," &c., in the Court of Claims. If proper effect is to be given to this language, it is evident that the *parties* to the suits must be within the jurisdiction of the court as well as the *claims*. This is what we maintain, but say the State of Louisiana cannot prosecute this action in the absence of an express statutory provision granting concurrent jurisdiction to the Court of Claims.

As a matter of fact, we do not believe the State of Louisiana has a forum (unless Congress is such) in which this claim can be maintained. A careful examination of the Constitution, the judiciary acts, the acts erecting and conferring jurisdiction on the Court of Claims, and the decisions, raises the important question whether it was ever intended under the Constitution that a State should have the right or privilege of suing the United States in any Federal court. Congress has never granted such jurisdiction to any court, and it has not been claimed elsewhere

than in the Court of Claims. No decision (except the one in this suit) has been delivered by any court in which the doctrine is promulgated, that under the Constitution, or under any law of Congress, the State can institute and maintain a suit against the United States. Congress can afford the State of Louisiana the relief prayed for, but the courts cannot.

Nor do we agree with the statement in the opinion that the United States is in the Court of Claims voluntarily by act of Congress. We object to the jurisdiction of the court, and deny that the appellant is voluntarily therein.

But it is said in the opinion that "it is the *subject-matter*, and not the *parties*, which determines the jurisdiction" of the Court of Claims. (Rec., 5.) Mr. Justice Bradley said (*supra*) it was the "parties" to whom "the privilege of suing the Government" was given.

The opinion of the court on this point turns somewhat upon the use made in § 1059, Revised Statutes, of the words "all claims." The broad ground is taken that the court has nothing to do, in a jurisdictional way, with the persons who own or present the claims, but that it has to do with the "claims" only. Yet in § 1067 of the Revised Statutes we find the word "person" used in connection with such "claims," and in § 1072 the "claimant," not the "claim," is required to file a petition in a prescribed form.

To our minds, all things considered, therefore, it is very plain that when the statutes prescribing the jurisdiction of, and proceedings in, the Court of Claims are considered together, it will be found that for jurisdictional purposes

the "parties" cannot be separated from the "claim," but, in order that a final judgment may be rendered, the court must have jurisdiction of both.

Exceptions to the jurisdiction of the court are made against "parties" under section 1068, not against "claims."

We have nothing to say in regard to the character of the State as a public corporation, nor of its capacity to maintain actions under certain circumstances, but we do say, that under the most liberal construction of the provisions of the Constitution, and under the acts of Congress in force when the petition was filed conferring jurisdiction on the Court of Claims, and on other courts of the United States, the State of Louisiana could not, in the absence of an express statutory provision authorizing the same, maintain an action against the United States.

Power is conferred upon the Court of Claims to decide the claims of individuals against the United States, but not to determine claims between States and Nations.

We are not bound by the decisions made in the three cases mentioned in the opinion in which States were parties, but in which the question of jurisdiction was not raised. No appeals were taken. (Rec. 5.) (*Vide United States* v. *McDougall's, Admr.*, 121 U. S. R., 89.)

The opinion of Attorney-General MacVeagh does not say in express terms that a State can institute and maintain an action against the United States in the Court of Claims. Nor is what is said by him an answer to the point upon which an opinion is requested. He simply makes a "suggestion," which is not, strictly speaking, a part of the opinion. His suggestion is based upon the fact that two cases had been presented to the Court of

Claims by States and no point raised as to the jurisdiction. He says, not as an *opinion*, but *suggestion*: "In this connection I would *suggest* that the State *may* have a remedy in the Court of Claims."

So what is treated as an opinion turns out not to be an opinion at all, and the *suggestion* has for its foundation two cases (*State of Texas Case*, 7 Ct. Cls. R., 301; State of Illinois and State of New Hampshire, 20 Ct. Cls. R., 342, 394), which Attorney-General MacVeagh states were "each * * * dismissed for want of prosecution."

This is rather a peculiar way of making one authority relied on sustain the other. We are not bound in this court by Attorney-General MacVeagh's suggestion. Nor are we bound by what the Court of Claims said in the two departmental cases, which were simply certified back to the respective Departments. Nor by the facts found in the case transmitted under the Bowman act of March 3, 1883, and in which the Court of Claims had no power to render a final judgment.

We do not feel convinced that Congress, in the distribution of judicial powers under the Constitution, granted to the Court of Claims, under § 1059 of the Revised Statutes, either original or concurrent jurisdiction of a cause in which a State is a party to a suit against the United States.

II.

Concerning the second assignment of error, the appellant maintains that, as to the items making up the claim for indemnity for swamp lands, the Court of Claims was with-

out jurisdiction. The claim, as will no doubt be admitted, is founded upon a law of Congress. The petition was not filed within six years after the claim first accrued.

By act of September 28, 1850 (9 Stat. L., 519), Congress granted the whole of the swamp and overflowed lands unfit for cultivation, and which remained unsold at the date of the passage of the act, to the several States. This was the beginning of the legislation upon this subject.

Some confusion seems to have arisen in the sale and transfer of the swamp lands; and in March, 1855 (10 Stat. L., 634), Congress found it necessary to legislate further for the purpose of adjusting certain difficulties. By section 2 provision was made to indemnify the States where they lost swamp lands under the act. The section reads as follows:

> SEC.—. * * * That upon due proof, by the authorized agent of the State or States, before the Commissioner of the General Land Office, that any of the lands purchased were swamp lands, within the true intent and meaning of the act aforesaid, the purchase money shall be paid over to the said State or States. * * *

By the act of March 3, 1857, the provisions of the act of March 2, 1855, are continued in force, and special reference is made therein to the act granting the swamp lands to the State of Louisiana, approved March 2, 1849. (9 Stat., L., 352.)

The lands for which indemnity is claimed were sold in 1857 and prior thereto, as stated in Finding No. 1. (Rec. 8.)

The State of Louisiana having been given the same *status* in the Court of Claims as other claimants by overruling the motion to dismiss for want of jurisdiction, the question presents itself, therefore, as to whether this part of the claimant's demand is not barred by the Revised Statutes, for the reason that the petition has not been filed within the required six years. (Rec. 3; R. S. 1069.)

Inasmuch as the tracts of land were sold prior to the passage of the act of Congress approved March 3, 1857, by which the provisions of the act of March 2, 1855, were extended, the claims which are founded on these two statutes did not accrue later than March 3, 1857.

They are presented here as claims founded upon such laws under section 1059, Revised Statutes. The petition was filed September 20, 1886, nearly thirty years after such claims accrued under the statutes, and more than thirty years after the sale of such lands.

A claim first accrues, within the meaning of the statute, when suit may first be brought upon it, and from that day the six years' limitation begins to run. (*Rice* v. *United States*, 122 U. S. R., 617.)

The appellee relies on the provisions of the statutes of 1850, 1855, and 1857 (*supra*) for its remedy to prosecute the claim in this court under section 1059, Revised Statutes. Such being the fact, there is nothing to exclude the claim from the provisions of section 1069, Revised Statutes.

Finding V shows that the agent of the State of Louisiana never furnished the proof required by section 2 of the act of 1855. (Rec. 8.)

Any delay in the adjustment and payment of this part of the claim is clearly to be attributed to the appellee, and of such delay it cannot take advantage.

If the Court of Claims had jurisdiction of this part of the claim (Finding I, Rec. 8) under any construction of the statutes, which we doubt, the question arises, when did such claim accrue. The finding of the court shows the Commissioner of the General Land Office to have found the amount of $23,855.04 due to the State of Louisiana June 30, 1885, on account of indemnity for swamp lands purchased by individuals within said State prior to March 3, 1857. (Find., I, Rec. 8.)

It is a fact, then, that the sum now sued for, $23,855.04, was due to the State of Louisiana prior to March 3, 1857. It had accrued at that time under the law. (*Rice* v. *United States, supra.*) The appellant was ready, it must be presumed, to pay it when the State had complied with the second section of the act of March 2, 1855 (10 Stat. L., 634). The State, or its authorized agent, neglected or refused to furnish the proof required by said section, and the Commissioner of the General Land Office, on the—— day of ———, 1885, accepted the field notes of the surveyor-general of Louisiana as such proof, and certified the amounts due to the Treasury Department, where the direct taxes were set-off against them. The claim was then taken to the Court of Claims by petition under the act granting original jurisdiction to that court. (Rec. 1.)

The opinion of the Court of Claims proceeds upon the theory that the right to sue under the respective acts was inchoate, and not mature in the absence of the action of

the Commissioner of the General Land Office. (Rec. 9.) The court says:

> If, in the absence of any action upon the part of the Commissioner of the General Land Office, the claimant had brought suit, would not a plea embracing the facts contemplated by the second section of the act of 1855 be a good plea in bar? If so, then the right of action was not complete, &c.

We do not think such a plea in bar would have been good. The question of proof under the section referred to is a question of fact, and within the *exclusive* jurisdiction of the Commissioner of the General Land Office. He is authorized to pay over to the States the purchase money *upon due proof made to him* of the swampy character of land. His function under the law is a judicial one. It is not subject to review by the Court of Claims or any other court.

It is clear, therefore, that neither the action nor inaction of the Commissioner (whichever it may have been) in the premises could have been made the basis of a plea in bar in another tribunal. What he did, or left undone, is not a subject of review elsewhere.

But is the further proposition of the court, that the right of action was not complete unless aided by the Commissioner, tenable under the facts as found by the court? The whole matter, under the law, was not dependent upon the action of the Commissioner; but the State, or its authorized agent, was required to do an act precedent to the action of the Commissioner. It is presumed the Commissioner did his official duty; that he acted as soon as the State of Louisiana made it possible for him to do so.

The inaction was entirely on the part of the State. No proof was furnished until, by lapse of time, the statute of limitation became a bar to the jurisdiction of the court, if, in fact, such jurisdiction ever attached.

It would be broad ground, under any state of facts, to assume that the Commissioner of the General Land Office could in any such manner abrogate or extend the statute of limitations.

But in a case where it is incumbent on the claimant to adduce proof, as in this case, and such proof is not adduced until the remedy afforded by law in the judicial department of the Government is lost, can it be said such remedy was lost because "it was unaided by the agency of the Commissioner of the General Land Office"?

If equity is to be invoked on behalf of the appellee, then such appellee must show that all the familiar rules of equity have been complied with in its behalf. This has not been and cannot be done. Who made it impossible for the "subsequent event," spoken of in the opinion, to happen? Not the Commissioner, because he was required to act on "due proof;" but no such proof was furnished within the six years after the claim accrued. To hold, therefore, that the statute of limitation is not a bar to the part of the claim now under consideration is practically to permit the appellee to take advantage of its own wrong. Neither the State nor its authorized agent made an effort to supply the necessary proof.

The right of action in this suit did not depend upon a contingency, any more than any other right of action in a Department, court, or other tribunal. It depended upon "due proof." Most claims, we believe, depend upon this

sort of contingency. But we never heard it urged before that, because the claimant neglected or refused to adduce such required proof, and for this reason the officer or tribunal was prevented from passing on its competency, or sufficiency, or finally upon the merits of the claim, the bar of the statute of limitation was avoided or removed thereby.

The right of action, if it ever accrued in the Court of Claims in relation to the claim under consideration, which we do not admit, accrued March 3, 1855, and the statute of limitations began to run against it from the same date. It was not changed by, nor did it depend upon, any contingency, except such as are common to all suits and claims.

It is held, in the opinion of the Court of Claims, incidentally, that the proceeds of the lands became a *trust fund* in the hands of the Government, and, in equity, would be unaffected by the statute of limitations until there was a disavowal of the trust by the refusal of the trustee to recognize the rights of the *cestui que trust*. (Rec. 10.)

The original grant to the States of these swamp lands is found in the act of September 28, 1850. (9 Stat. L., 519, § 2479, R. S.) It is provided that the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied exclusively, *so far as necessary*, to the purpose of reclaiming said lands by means of levees and drains.

The grant is made subject to the discretion of the States as to how much of the proceeds shall be applied to the purposes mentioned in the act. The proceeds can, therefore, be used for any other purpose by the State, and they are not held in trust for a specific purpose. The grant is

an absolute gift, coupled with the provision that so much thereof as may be necessary shall be used for the purpose named. (*Wright* v. *Roseberry*, 121 *U. S.*, 488.) Whether the amount in controversy is necessary for such purpose is a matter of fact, which has not been found by the court. The fund is not, therefore, held by the appellant in trust for the State for the purpose of having it specifically applied. The State, when it receives the money, may determine that it is not necessary for the construction of drains, and may apply it to any general purpose.

The act of March 2, 1855 (10 Stat. L., 634), provides, in section 2, that if upon due proof * * * any of the lands purchased were swamp lands, within the true intent and meaning of the act of September 28, 1850, *supra*, *the purchase-money shall be paid over to the said State or States.*

The act of March 3, 1857 (11 Stat. L., 251), confirms the grants to the States.

The act of September 28, 1850, appears to have been proposed in the first place as an enabling act for the State of Arkansas, but, by section 4, its provisions were extended to the other States.

In some of the States, where the benefits of the act apply, the construction of drains and levees would not be necessary, or, if so, to a very limited extent. Hence, if under the law the fund must be used for such specific purposes, it would be utterly useless and unavailable. But such was not intended by Congress. The fund is to be applied to general purposes.

The Commissioner of the General Land Office is directed and authorized by Congress *to pay* to the States,

upon due proof, the purchase money. This is all there is of the law. No express trust is declared, and none can well be implied.

Many attempts have been made in the Court of Claims to avoid the statute of limitations in suits for the proceeds of captured and abandoned property, upon the theory that the funds are trust funds and the Government a trustee.

In the case of Rice *v.* The United States (122 U. S. R., 611), this point was urged by able counsel with great force. The motion to dismiss in the Court of Claims for want of jurisdiction by reason of the application of the statute of limitation in bar of the jurisdiction was sustained. The case was appealed to the Supreme Court and affirmed by a divided court. The case is in point here. It ought, and we think it does, practically settle the point that the Government is not a trustee of every fund that happens to fall into its possession. It never ought to be held to be such trustee, unless Congress by an act expressly says it shall be.

The net proceeds of these lands are in the Treasury like any other money and not as a specific fund, and can only be gotten out in payment of this claim, by an appropriation of Congress, in the same manner that other claims against the Government are paid.

The five per centum fund was to be expended in laying out and constructing public roads and levees under the direction of the legislature, but this does not apply to the indemnity fund. (2 Stat. L., 643, § 5.)

The Five Per Cent. Cases (110 U. S. R., 471) were brought under certain sections of the acts of Congress under the *original jurisdiction* of the Supreme Court of the United States.

III.

The appellant contends that the part of the final judgment based on Finding I of the court (Rec., 8) is erroneous, because the claim was within the exclusive jurisdiction of the Commissioner of the General Land Office, under section 2 of the act of March 2, 1855 (10 Stat. L., 634). The section reads:

> That upon due proof, by the authorized agent of the State or States before the Commissioner of the General Land Office, that any of the land within the true intent and meaning of the act aforesaid had been sold by the General Land Office, the purchase-money shall be paid over to the said State or States.

But let us examine the authorities bearing directly or by analogy upon the question of exclusive jurisdiction when conferred on an officer or tribunal.

Although the doctrine of exclusive jurisdiction for which the appellant contends has been frequently passed upon by the courts, yet it has not been anywhere so strongly emphasized as in the case of Johnson *v.* Towsley (13 Wall., 83), where the Supreme Court say:

> But while we find no support to the proposition of the counsel for plaintiffs in error in the special provisions of the statute relied on, *it is not to be denied that the argument is much stronger when founded on the general doctrine, that when the law has confided to a special tribunal the authority to hear and determine certain matters arising in the course of its duties, the decision of the tribunal, within the scope of its authority, is conclusive upon all others.*

In *Marshall's Case* (21 C. Cls. R., 308) the court held that a special act of Congress conferred exclusive jurisdic-

tion upon the Secretary of War (14 Stat. L., 417). The act upon which Marshall's claim was founded reads as follows:

> SEC. 2. *And be it further enacted*, That the Secretary of War is authorized and required to refund from the commutation money the amount (not exceeding $300 in any one case) paid by any person drafted during the late war who furnished a substitute or paid commutation money, whenever it shall appear that, under the rules and decisions of the War Department governing at the time, the said person was entitled to discharge from the obligation to render personal service under the draft for which he paid money or furnished a substitute; and to refund in like manner in all cases when it shall appear that a person, so having paid commutation money or furnished a substitute, was not legally liable to draft; *Provided*, That this section shall apply only to claims received at the War Department prior to its passage.

By way of interpretation of the above act, Judge Scofield, who delivered the opinion of the court, said:

> On the other hand, the counsel for the claimants contends that this statute did not, directly or indirectly, confer any jurisdiction over these claims upon the Court of Claims, but conferred it exclusively upon the Secretary of War.
>
> The Secretary of War would thus become clothed with exclusive authority to hear and determine these cases. From his decision there would be no appeal except to Congress. Quite likely this is the proper construction to be placed upon the statutes.

In *Ramsay's Case* (14 C. Cls. R., 371) the court, in an opinion delivered by Chief-Justice Richardson, held that the claim of an informer was within the exclusive jurisdiction of the Secretary of the Treasury, under the *Act of July*

13, 1866 (14 Stat. L., 145). The part of the act which is material for the purposes of this case reads as follows:

> The Secretary of the Treasury, under general regulations to be by him prescribed, shall determine whether any claimant is entitled to such share as above limited, and to whom the same shall be paid, and shall make payment accordingly.

It is clear [says the court] that the statute makes the Secretary of the Treasury the sole judge as to whether there is an informer who is entitled to a share of any sum received in lieu of penalty before judgment, in like manner as it confers upon the court alone which imposes a fine, penalty, or forfeiture the same authority after judgment. *In each case special and exclusive jurisdiction of the matter is given to a tribunal or officer other than this court.*

In *Woolner's Case* (13 C. Cls. R., 366), in an opinion delivered by the present chief justice, the court said:

> When the law intrusts the decision of any question of fact to a designated public officer, the sufficiency of the evidence depends upon his own judgment, and cannot be reviewed by any other officer or any tribunal. What would be sufficient for him might not be sufficient for other minds, and what would be sufficient for others might be quite insufficient for him.

The *Portland Company's Case* (5 C. Cls. R., 445) was decided upon the doctrine in *Nicholl's Case* (7 Wall., 122), as coming within the administration of the internal-revenue laws. The petition was dismissed for want of jurisdiction, and Judge Nott, in a concurring opinion, placed the case upon another ground than the one contained in the opinion of the court, namely:

> It is the case of a party seeking affirmative relief, given, not by the general principles of law, but by

an express statutory provision, which at the same time prescribes a special mode of obtaining redress, and designates a particular tribunal as having what the courts have again and again held to be exclusive jurisdiction.

In *Davidson's Case* (21 C. Cls. R., 298), the court held that section 4756, Revised Statutes, conferred upon the Secretary of the Navy exclusive jurisdiction to determine the facts and decide the law. The court, in dismissing the petition, said:

> If this court were authorized to review the action of the Secretary in the premises, we might possibly find good reason for concurring in his decision, but section 4756 seems to confer upon that officer exclusive jurisdiction to determine the facts and decide the law. The application is to be made to him; he is to become satisfied that it comes within the provisions of the statute; and his certificate is to be the warrant upon which the pension shall be paid by the Commissioner of Pensions.
>
> Until he has decided the case and given the certificate there seems to be no liability on the part of the Government that can be enforced in this court. Jurisdiction over a charity or other fund, conferred upon a particular tribunal by the statute enacting it, is thereby withheld from other tribunals within whose general powers it would otherwise fall.
>
> Thus we have heretofore held that this court is without jurisdiction to review the action of the Interior Department in making up the roll of invalid pensions. (*Dailey's Case*, 17 C. Cls. R., 144; *Harrison's Case*, 20 C. Cls. R., 122.)
>
> So we have repeatedly held that a decision of the Commissioner of Internal Revenue, relative to refunding of taxes under section 3220, Revised Stat-

utes, cannot be reviewed by this court, unless impeached for fraud or mistake. (*Kaufman's Case*, 11 C. Cls. R., 659, affirmed, 96 U. S. 567; *Ramsay's Case*, 14 C. Cls. R., 367; *Greencastle Bank*, 15 C. Cls. R., 225; *Sybrant's Case*, 19 C. Cls. R., 461.)

From the doctrine announced in the above authorities we think it is clearly shown that the claim described in the third assignment of error was within the exclusive jurisdiction of the Commissioner of the General Land Office.

IV.

Did the court err in dismissing the appellant's plea of counter-claim or set-off? The claims were certified to the Treasury Department by the Secretary of the Interior in 1885 and 1886.

The Secretary of the Interior and the officials of that Department have followed the statutes in their certificates to the stated accounts. The First Comptroller also followed the statutes in admitting and certifying the amounts due the claimant.

No statute of limitation arose as to their action. The only controverted question that may be said to have been specially transmitted to this court by either of the Departments arises upon the action of the Comptroller in directing the appellee's claim to be set-off or credited against the direct tax alleged to remain due to the Government from the State of Louisiana.

A similar question arose in the office of the First Comptroller in a claim on the part of the State of Mississippi for payment of the amount found due it on account of sales of public lands within its limits, and the Comptroller,

after a thorough consideration of the subject, rendered an opinion which is applicable to the question of set-off in this case, and which is now made part of the argument upon this branch of the case.

The Commissioner of Internal Revenue has furnished a complete statement of the facts in the case, together with a reference to authorities and documents sustaining the Comptroller of the Treasury in crediting the amount due the claimant against the direct tax account. This letter, dated October 6, 1886, is made a part of this brief, and a copy thereof will be found in the appendix.

The First Comptroller of the Treasury also made a similar statement, with a citation of authorities, of date October 20, 1886, which is likewise made a part of this brief, and a copy of which will be found in the appendix.

The prayer for judgment over against the State of Louisiana is an error.

Upon what has already been said, and relying on what has been produced by the Treasury Department, and also upon the authorities referred to by the Commissioner and First Comptroller, this branch of the case is submitted to the court.

V.

The fifth and sixth assignments are covered by the preceding argument, and it will not be essential to notice them separately and in detail.

A. H. GARLAND,
Attorney-General.
HEBER J. MAY,
Assistant Attorney.

OCT. 4, 1887.

APPENDIX.

TREASURY DEPARTMENT,
OFFICE OF INTERNAL REVENUE,
Washington, October 6, 1886.

Hon. DANIEL MANNING,
Secretary of the Treasury:

SIR: In compliance with your request of the 29th ultimo, upon a letter of the Acting Attorney-General, dated the 27th ultimo, relative to the case of *The State of Louisiana* v. *The United States*, pending in the Court of Claims (No. 15295), I have the honor to return the letter, with the printed copy of the petition, and to report as follows:

This is an action brought by the State of Louisiana against the United States for the recovery of $71,643.16 [$71,385.83?], which sum, it is alleged, was found due the State of Louisiana by the proper accounting officers of the Treasury Department, and instead of being paid, was carried by adjustment to the credit of the State on account of direct taxes charged against said State.

The Acting Attorney-General desires a full statement in writing of all the facts, circumstances, and evidence in the possession or knowledge of the Department touching the claim, which statement "shall contain a reference to or description of all such official documents or papers, if any, as may furnish proof of facts referred to in it, or may be necessary and proper for the defense of the United States against the claim, mentioning the Department, office, or place where the same is kept or may be procured."

By the *Act of August* 5, 1861 (12 Stat., 292), Congress imposed a direct tax of $20,000,000 upon the whole United States, which was apportioned among the different States and Territories according to population. The amount apportioned to the State of Louisiana was $385,886.67.

Most of the States, except the eleven insurrectionary States, assumed and paid the amounts apportioned to them.

Another act was passed June 7, 1862, providing for the collection of the tax in the insurrectionary States through United States direct-tax commissioners. This act superseded the act of August 5, 1861, so far as related to States in rebellion (9 Wall., 326; 14 Wall., 553), and was modified by the acts of February 6, 1863, and March 3, 1865.

Commissioners were appointed for the State of Louisiana, and were engaged in making assessments and collections until Congress, by an act approved July 28, 1866, authorized a suspension of further collections in the eleven States referred to until January 1, 1868, and by act of Congress, approved July 23, 1868, the suspension was further continued until January 1, 1869, since which date collections have not been resumed, nor has Congress taken action further suspending the same.

Of the $385,886.67 apportioned to the State of Louisiana there was collected by the commissioners from the owners of lands subject to that direct tax the sum of $314,500.84, leaving an indebtedness of $71,385.83.

It appears that in 1868 the then First Comptroller, Hon. R. W. Tayler, having decided that the direct tax was a debt due by the States, entered the State of Louisiana on the books of the Treasury as a debtor to the United States. The same action was taken in regard to all the States, and accounts were stated charging them with their quotas and crediting them with amounts collected.

A copy of the statement in regard to Louisiana, the original being on file in the Register's office (miscellaneous accounts, Fifth Auditor, No. 55565), is inclosed.

The accounts of the States in relation to the direct tax are kept in the office of the First Comptroller and in the office of the Register of the Treasury, and the statements made in the petition as to the amount of claims which have been adjusted and credited to the State of Louisiana, and the character of the same, cannot be verified by any accounts kept in this office. For a statement in regard to them I respectfully refer you to the First Comptroller.

I have been unofficially advised, however, that the amount of certain claims of the State, aggregating $71,385.83, have been so applied, thus balancing the account and settling the claim against the State for the unpaid quota of direct tax.

The question involved in the suit is whether the United States has a right to apply moneys due a State as a set-off against the quota of direct taxes apportioned to States by the direct-tax act of August 5, 1861.

The practice has been in the office of the First Comptroller, instead of paying claims which have been adjusted in favor of States, to credit the sum due to the States upon unpaid balances of direct tax charged. Section 1766, Revised Statutes, provides "that no money shall be paid to any person for his compensation who is in arrears to the United States until he has accounted for and paid into the Treasury all sums for which he may be liable," &c.

It is also claimed that the right of the accounting officers of the Treasury Department to make set-offs in such cases is well settled on general principles. *Gratiot* v. *United States* (15 Pet., 370); *McKnight* v. *United States* (98 U. S., 186); *United States* v. *Union Pacific Railroad Company* (91 U. S., 79). In *Bonnafon's Case* (14 C. Cls. R. 484) the syllabus states that "notwithstanding the absence of statutory authority, it was legal and proper for the accounting officers, in the course of settling ordinary accounts in the Treasuary, to set off a debt due from the claimant against one due from the Government." In *Taggart's Case* (17 C. Cls. R., 322) the syllabus says that

in such case "the accounting officers *are required by law to set off the one indebtedness against the other*, and certify only the balance."

First Comptroller Lawrence, in his decision in the Georgia case, in which the same points seem to be involved as in this case, also refers to other decisions upon the general question of set-offs. (4 Lawrence, 354.)

There is no question as to the right and duty of the accounting officers to make the set-off if the State is a debtor to the United States, as appears from the books of the Treasury Department. There has been a conflict of opinion among those who have been called upon to consider the question as to the liability of the States for direct tax where, as in the case of Louisiana, payment has never been assumed by the State as provided by section 53 of the act of August 5, 1861.

The whole question has been thoroughly discussed in decisions of the Comptroller and in reports of committees in Congress, and I inclose certain documents, and refer to other documents of a public character, which are accessible, from which the information desired can be obtained, as far as this office is able to furnish it.

DOCUMENTS TRANSMITTED.

(1) Senate Ex. Doc. No. 24, first session Forty-sixth Congress. Letter from the Secretary of the Treasury in answer to Senate resolution of May 14, 1879, in relation to the liability of the States for the direct tax under the act of August 5, 1861, and acts amendatory thereof, containing decision of Hon. A. G. Porter, First Comptroller; the argument in the Georgia case; debates in Congress, and a compilation of statutes of the United States relating to direct taxes from 1798 to 1868; also including an extract from the report of the Commissioner of Internal Revenue for 1870, giving the proceedings had under the act of 1861, and its amendments.

(2) Pamphlet relative to the right of the United States

to apply money appropriated by Congress to the State of Georgia by way of set-off against the quota of direct taxes apportioned to that State by the direct-tax act of August 5, 1861, Georgia case, containing copy of the decision of First Comptroller Lawrence and of the letter of Commissioner of Internal Revenue to the Secretary of the Treasury of May 3, 1880, relative to the direct tax. (4 Lawrence's Decisions, p. 354.)

(3) Annual report of the First Comptroller to the Secretary of the Treasury for the year 1885, containing the decision of First Comptroller Durham in the Mississippi direct-tax case.

(4) Copy of the statement of an account between the United States and the State of Louisiana on account of direct tax, dated May 12, 1868; miscellaneous accounts Fifth Auditor, No. 55565, original being on file in the office of the Register of the Treasury.

REFERENCES.

(1) Decision of First Comptroller in the Kansas case. (2 Lawrence's Decisions, p. 301.)

(2) Report from the Committee on the Judiciary, House of Representatives, on the Georgia case. (Report No. 752, Forty-eighth Congress, first session.)

(3) Report from same committee. (Forty-ninth Congress, first session, Report No. 35.)

(4) Report from Senate Judiciary Committee relative to claim of State of Georgia. (Senate Report No. 1138, Forty-ninth Congress, first session.)

(5) Report from Committee on Claims, House of Representatives, on bill to adjust accounts between the United States and the States and Territories. (Majority and minority reports, H. R. No. 2486, part 1 and part 2, Forty-eighth Congress, second session.)

Very respectfully,

JOS. S. MILLER,
Commissioner.

TREASURY DEPARTMENT,
FIRST COMPTROLLER'S OFFICE,
Washington, D. C., October 20, 1886.

HON. DANIEL MANNING,
Secretary of the Treasury:

SIR: I have the honor to acknowledge the receipt, by reference from your office, of the request of the Acting Attorney-General for information relating to the case in the Court of Claims of The State of Louisiana *vs.* The United States, No. 15295, as per the accompanying petition of the claimant.

In reply I have the honor to state that, on the 13th of May, 1868, this office received from the Fifth Auditor an account as stated between the United States and the State of Louisiana "for amount of direct tax imposed and apportioned by the provisions of the eighth section of an act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes, approved August 5, 1861;" and on the 29th of the same month this office certified a balance of $385,886.67 as due thereon to the United States from the said State of Louisiana.

Since that date said State has been credited on the account with taxes collected thereon by the direct-tax commissioners $314,500.84, and with deposits made applicable to the account aggregating $71,385.83, thereby balancing the account by credits to the amount of the quota, $385,886.67.

It will be observed that the amount credited to the State as collected by the direct-tax commissioners is $314,500.84, instead of $268,515.12, as stated in said petition. Said petition also claims as due to the State the sum of $71,643.16, whereas the two items of which it is represented to consist ($27,657.44 and $43,728) make $71,385.44.

The act imposing the tax in question provides "that a

direct tax of twenty millions of dollars be and is hereby annually laid upon the United States, and the same shall be and is hereby apportioned to the States respectively in manner following: To the State of Louisiana, three hundred and eighty-five thousand eight hundred and eighty-six and two-thirds dollars." (Sec. 8, Act Aug. 5, 1861.) And nothing appears to show that the Comptroller of that period entertained any doubt of the liability of the State for the amount of tax thus imposed in accordance with the apparently common understanding and contemporaneous opinions on the subject.

In a communication of the Comptroller, Hon. R. W. Tayler, of May 20, 1867, addressed to the honorable Secretary of the Treasury, he incidentally referred to the subject as follows:

The tax was laid upon the States rather than upon the individual citizens or the property of the individual citizens. The Constitution authorizes Congress to lay and collect taxes, and requires that direct taxes shall be apportioned among the several States by a certain rule, so that in laying the tax and apportioning it the constitutional provisions were followed.

The tax could be laid on the United States and apportioned among the States, but of necessity it must be collected from the property of the individual members of the community; and Congress accordingly made provision for its collection in this way.

In the absence of any provision authorizing it, the people, in their collective capacity, through the proper authorities of the State organization, could unquestionably step in and pay the tax and relieve the citizens from the direct imposition upon their private property, and that this might be done Congress withheld the appointment of revenue officers until after the second Tuesday of February, 1862. The purpose of this delay is disclosed in the 53d section of the act, which declared it lawful for each State and Territory and the District of Columbia to as-

sume, assess, collect, and pay *its* quota of the tax—not the quota of the individual citizens, but the quota of the States; thus very clearly affirming, though not in direct terms, that the tax was laid upon the State. Of course it was not necessary for the State to assess and collect the tax from the citizens if it had means otherwise for its payment.

In the event the State should not assume to pay the tax, Congress provided for its collection from the real estate of the individual citizens through the agency of officers of the United States.

There were but two ways in which the tax could be realized: the one, payment by the State; the other, in the event of failure of such payment, collection by United States officers from the property of the individual citizens. Congress recognized and provided for both ways.

But there is another and prudent provision in section 53 of the act of 1861, which has not been repealed, modified, or superseded by positive or indirect legislation, or by implication. It is as follows: The amount of direct tax apportioned to any State, Territory, or the District of Columbia shall be liable to be paid and satisfied, in whole or in part, by the release of such State, Territory, or District, duly executed to the United States, of any liquidated and determined claim of such State, Territory, or District of equal amount against the United States.

More recently somewhat different opinions have been developed in relation to the nature, effect, and proper construction of the direct-tax enactments of August 5, 1861, and June 7, 1862, &c. Prominent among these are the decisions of late First Comptroller, William Lawrence, in the Kansas and Georgia cases, respectively, and especially as to the right to make set-off on account of direct taxes apportioned to a State in settling an account with the State. (See First Comptroller's Decisions, Lawrence, vol. 2, p. 301, and vol. 4, p. 354.

The opinion of the Supreme Court of the United States

in the following cases may have incidental bearing more or less pertinent upon questions which may become more or less directly involved in the pending case, to wit: In the cases of *Bennet* v. *Hunter*, 9 Wallace, p. 333; *De Treville* v. *Smalls*, 8 Otto, p. 521; *Springer* v. *United States*, 12 Otto, p. 592; *United States* v. *Taylor*, 14 Otto, p. 216.)

The said letter of the Acting Attorney-General and the petition of the claimant are herewith returned.

Very respectfully,

M. J. DURHAM,
Comptroller.
By J. R. GARRISON,
Deputy Comptroller.

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Clerk Supreme Court U. S.
FILED
MAR 21 1888
JAMES H. MCKENNEY

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES, APPELLANT,
v.
THE STATE OF LOUISIANA. } No. 1388.

APPEAL FROM THE COURT OF CLAIMS.

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES, APPELLANT,
v.
THE STATE OF LOUISIANA. } No. 1388.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES, APPELLANT.

STATEMENT.

Two cases in the Court of Claims, Nos. 15543 and 15777, involving the same questions of law and depending upon the same facts in the record, were consolidated. (Rec., 7.)

The claim in this case embraces two items. The first, under the petition as amended, is for $36,439.69, alleged to have arisen under the *Act of 20th February*, 1811 (2

Stat. L., 641), and is for the 5 per cent. of the net proceeds of the sales of lands of the United States within the limits of Louisiana after 1st January, 1812. (Rec., 8.)

The second, under the petition as amended, is for $7,133.02, alleged to have arisen under the *Swamp Land Acts of September* 28, 1850 (9 Stat. L., 519), and the *Act of March* 2, 1855 (10 Stat. L., 634). The aggregate claim, therefore, as alleged, is $43,572.71. (Rec., 8.)

The accounting officers of the Treasury Department set off against the claims of the State the sum of $31,080, which amount was for interest past due on State stocks, State bonds, and Indian trust-fund bonds held by the Government, and the sum of $1,392.71 was applied to the part payment of the principal of bonds not at that time matured. It will be readily admitted that the set-off against the principal of bonds that will not mature until 1894 can not well be maintained in a court of law. This, however, is a very small part of the set-off. There remains the sum of $31,080, which we contend may be rightfully and legally set off against the claimant's demand. A plea of set-off has been filed for this purpose, in which it will be observed the amount of the set-off is, by mistake, stated much larger than it actually is under the findings of the court. (Rec., 5, 9.)

The claimant endeavors to avoid the plea upon the ground that the claim is a trust fund, and that the debt held by the Government and the claimant's debt are not mutual, and hence can not be set off one against the other.

The Court of Claims held in a former suit between the parties hereto (22 C. Cls. R., 284) that the funds were

held by the Government as trust funds, and the statute of limitations did not begin to run until a disavowal of the trust by the trustee. Counsel for claimant now contend that, because the demand herein is a trust fund and the Government a trustee, there is no mutuality of obligation as between the claim and the set-off.

The case referred to was appealed by the Attorney-General to the Supreme Court, and the question as to whether these were trust funds argued in the brief of the appellant, but the point was not decided. (123 U. S. R., 32.)

The amounts were due from the United States to the appellee, and the sum of $31,080 was due from the appellee to the appellant by way of interest on the bonds held by the latter. (Rec., pp. 8, 9.)

The item of $13,602.71 was deposited in the Treasury to the credit of the State of Louisiana more than six years before the petition was filed. (Rec., pp. 8, 9.)

Two questions are presented for the consideration of the court in this case, namely:

(1) Does the statute of limitations apply to the item of $13,602.71?

(2). Are the funds which have accrued to the State of Louisiana under the act of Congress approved February 20, 1811 (2 Stat. L., 641), and under the acts September 28, 1850 (9 Stat. L., 519), and March 2, 1855 (10 Stat. L., 634), of such a character that the just, admitted, and matured indebtedness of said State to the United States, being interest on the bonds aforesaid, can not be set off against the same?

ASSIGNMENT OF ERRORS.

The appellant assigns the following errors:

(1) The court below erred in not dismissing the item of $13,602.71 for want of jurisdiction.

(2) The court below erred in holding that the respective funds accruing to the State of Louisiana, under the act of Congress approved February 20, 1811 (2 Stat. L., 641), and under the acts of Congress of September 28, 1850 (9 Stat. L., 519), and March 2, 1855 (10 Stat. L., 634), are trust funds and not subject to the plea of set-off filed by the United States, setting up an indebtedness from said State for interest admitted to be due on certain bonds of the appellee held and owned by the appellant.

(3) The court below erred in dismissing the set-off or counter-claim of the United States.

(4) The court below erred in entering judgment for the appellee for more than $12,490.71, the difference between the appellee's demand and the amount found and admitted to be due on the appellant's counter-claim or set-off.

BRIEF OF ARGUMENT.

ARE THEY TRUST FUNDS?

The chief question in this case is as to the character of the respective funds upon which the claim of the State of Louisiana is based. Are they respectively trust funds?

This question was argued in the brief for the United States in the case of *The United States* v. *The State of Louisiana*, but was passed over without notice in the opin-

ion, probably because no error was assigned upon the point. (*United States* v. *Louisiana*, 123 U. S. R., 32.)

We reprint here what was said in that brief.

> It is held, in the opinion of the Court of Claims, incidentally, that the proceeds of the lands became a *trust fund* in the hands of the Government, and, in equity, would be unaffected by the statute of limitations until there was a disavowal of the trust by the refusal of the trustee to recognize the rights of the *cestui que trust*.
>
> The original grant to the States of these swamp lands is found in the act of September 28, 1850. (9 Stat. L., 519, § 2479, R. S.) It is provided that the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied exclusively, *so far as necessary*, to the purpose of reclaiming said lands by means of levees and drains.

The grant is made subject to the discretion of the States as to how much of the proceeds shall be applied to the purposes mentioned in the act. The proceeds can, therefore, be used for any other purpose by the State, and they are not held in trust for a specific purpose. The grant is an absolute gift, coupled with the provision that so much thereof as may be necessary shall be used for the purpose named. (*Wright* v. *Roseberry*, 121 U. S., 488.) Whether the amount in controversy is necessary for such purpose is a matter of fact, which has not been found by the court. The fund is not, therefore, held by the appellant in trust for the State for the purpose of having it specifically applied. The State, when it receives the money, may determine that it is not necessary for the construction of drains, and may apply it to any general purpose.

The act of March 2, 1855 (10 Stat. L., 634), provides, in section 2, that if upon due proof * * * any of the lands purchased were swamp lands, within the true intent and meaning of the act of September 28, 1850, *supra*, *the purchase-money shall be paid over to the said State or States.*

The act of March 3, 1857 (11 Stat. L., 251), confirms the grants to the States.

The act of September 28, 1850, appears to have been proposed in the first place as an enabling act for the State of Arkansas, but, by section 4, its provisions were extended to the other States.

In some of the States, where the benefits of the act apply, the construction of drains and levees would not be necessary, or, if so, to a very limited extent. Hence, if under the law the fund must be used for such specific purposes, it would be utterly useless and unavailable. But such was not intended by Congress. The fund is to be applied to general purposes.

The Commissioner of the General Land Office is directed and authorized by Congress *to pay* to the States, upon due proof, the purchase money. This is all there is of the law. No express trust is declared, and none can well be implied.

Many attempts have been made in the Court of Claims to avoid the statute of limitations in suits for the proceeds of captured and abandoned property, upon the theory that the funds are trust funds and the Government a trustee.

In the case of *Rice* v. *The United States* (122 U. S. R., 611), this point was urged by able counsel with great force. The motion to dismiss in the Court of Claims for want of

jurisdiction by reason of the application of the statute of limitation in bar of the jurisdiction was sustained. The case was appealed to the Supreme Court and affirmed by a divided court. The case is in point here. It ought, and we think it does, practically settle the point that the Government is not a trustee of every fund that happens to fall into its possession. It never ought to be held to be such trustee, unless Congress by an act expressly says it shall be.

The net proceeds of these lands are in the Treasury like any other money and not as a specific fund, and can only be gotten out in payment of this claim, by an appropriation of Congress, in the same manner that other claims against the Government are paid.

The five per centum fund was to be expended in laying out and constructing public roads and levees under the direction of the legislature, but this does not apply to the indemnity fund. (2 Stat. L., 643, § 5.)

The proper construction of the law upon this subject will be found in the opinions of the Supreme Court in *Emigrant Co.* v. *County of Wright* (97 U. S. R., 339) and *Emigrant Co.* v. *County of Adams* (100 U. S. R., 66–'7–'8–'9).

The items of the claim consist of donations made to the State upon certain conditions expressed in the statute. The Supreme Court has held that the legislature of Iowa could divert the funds to other purposes than those named in the act of Congress, in the exercise of its discretion; that Congress alone has the power to enforce the conditions of the grant, either by revocation or other suitable

action, for the violation thereof. The fund is therefore, in effect, the individual fund of the State.

There has been no express trust created by the acts of Congress in relation to these funds. Can such trust be implied? What does the Supreme Court mean when it says, in construing the swamp-land acts (100 U. S. R., 61, 62, *supra*):

> A grant, subject to the conditions of that act, made by a State of its swamp and overflowed lands to the several counties in which they are situated, to be disposed of for *general county purposes*, is valid.
> * * *

And when we examine fully what the Supreme Court has said upon the subject, and especially upon the interpretation of the act of Congress, to be found on page 69 of the case above cited, we apprehend there will be some difficulty in arriving at the conclusion that the State is a trustee, or the fund a trust fund. The State legislature can do as it pleases with the land or the proceeds donated by the swamp-land acts. Congress can only prevent such disposal thereof by revoking the donations. This, briefly, is all there is of the question.

It may be remarked here that the question presented to the court for its decision is, whether, under a proper interpretation of the respective statutes, the 5 per cent. fund and the swamp-land fund are trust funds, to be held in this instance by the State of Louisiana as a trustee. And, if this question shall be decided in the affirmative, are the funds of such a character that a legitimate debt due to the United States from Louisiana can not be set-off against either or both of the funds?

The Attorney-General contends that, although the demands that exist between the parties may not have arisen under ordinary circumstances and in an ordinary transaction, yet the debts are mutual obligations, held in mutual right, and that the appellants' set-off is a proper and legal one.

LIMITATION.

The question of jurisdiction under the statute of limitations was also argued and passed upon by the Supreme Court in *United States* v. *Louisiana* (123, U. S. R., 32).

The Court of Claims held that the right of action depended upon a contingency, and the statute did not begin to run until such contingency happened. The contingency in that case happened within the six years previous to the filing of the petition (*Louisiana* v. *United States*, 22 C. Cls. R., 284).

This court affirmed the decision of the Court of Claims in this ruling (*United States* v. *Louisiana*, 123 U. S. R., 32).

In this case the contingency happened as to the item of $13,602.71 more than six years before the petition was presented to the court below (Record 8, 9; Finding I).

Unless there is some rule that avoids the application of the statute of limitations this item of the claim is barred, and the Court of Claims was without jurisdiction. It is contended by counsel for appellee that the funds are trust funds and the statute of limitations does not apply or begin to run until the disavowal of the trust by the trustee.

It will be observed, therefore, that this point, as well as others in this case, turn upon the question whether the 5 per cent. and swamp-land funds are trust funds of the character asserted by counsel for appellee.

Respectfully,

A. H. GARLAND,
Attorney-General.
HEBER J. MAY,
Assistant Attorney.

MARCH 19, 1888.

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Office Supreme Court U. S.
FILED.
MAR 27 1888
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

October Term 1887.—No. 1388.

UNITED STATES, Appellant,

vs.

THE STATE OF LOUISIANA, Appellee.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLEE.

WM. E. EARLE,
JAMES L. PUGH, Jr.,
Attorneys for Appellee.

McQUEEN & WALLACE, LAW PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

October Term 1887.—No. 1388.

UNITED STATES, APPELLANT,

vs.

THE STATE OF LOUISIANA, APPELLEE.

Appeal from the Court of Claims.

BRIEF FOR APPELLEE.

This is an appeal from the Court of Claims, and the error assigned and which seems to be relied upon by the United States is, that this fund is not a trust fund and that therefore the demand is barred by the statute of limitations or, more technically, is excluded from the jurisdiction of the Court of Claims.

The facts and the question here involved are much the same as in the case between the same parties decided at the present term of this court (123 U. S. 32), except that in that case it was also held that the Direct Tax was not a debt of the State. The question as to whether the Five Per Cents were trust funds was involved in that case, and must necessarily have been decided affirmatively, though it was not deemed necessary to comment upon this question in the opinion of the court.

We say it was necessarily decided by this Court because it was so decided by the court below as shown by the opinion

of the Court of Claims, and if it had not been, the claims would have been barred by the statute of limitations, or excluded from the jurisdiction of the court, for unless the funds were in legal contemplation trust funds the right to recover was not inchoate but complete upon the enactment of the statutes respectfully of February 20, 1811, and of September 28, 1850.

In the opinion of the Court of Claims is the following express ruling on this point:

"So that the proceeds of the lands became, in the hands of the Government, a trust fund, and as such would be unaffected by the statutes of limitations until there was a disavowal of the trust by the refusal of the trustee to recognize the rights of the *cestui que trust*." (See page 10 of Record of Supreme Court No. 1025.)

And in the opinion affirming that judgment is the following language, which seems to be conclusive on this point as to the Swamp Land indemnities:

"The statute of limitations does not seem to us to have any application to the demand arising upon the swamp-land acts.

"The act of 1850 contemplates that the Secretary of the Interior will identify the lands described, and although the State could not be deprived of her rights by the inaction of that officer (Wright *v.* Roseberry, 121 U. S., 488, 501) she was not obliged to proceed in this assertion in the absence of such identification. By the act of 1855, which provided for the payment to the State of moneys received by the United States on the sales of swamp lands within her limits, the payment was made to depend upon proof of the sales by the authorized agent of the State before the Commissioner of the General Land Office. No such proof was ever made or offered, and, therefore, until in some other equally convincing mode the swampy character of the lands sold was established to the satisfaction of the Commissioner, no definite ascertainment of the amount due to the State was had, so as

to constitute a ground of action for its recovery in the Court of Claims." (123 U. S., 37.)

If we are correct in our construction of the language used by both courts on this question it is *res adjudicata*, for if it was not a trust fund, then one of the claims had been barred for near three-quarters of a century and the other for nearly one-quarter of a century.

In deference, however, to the judgment of the Attorney-General in taking the appeal in the present case we beg to submit some observations upon the point as

A QUESTION OF FIRST IMPRESSION.

Before doing this, however, it may be well to notice the following points made in appellant's brief. He says: "The item $13,602.71 was deposited in the Treasury to the credit of the State of Louisiana, more than six years before the petition was filed." (Rec., pp. 8 and 9.) Grant that it was, and it is wholly immaterial if, as we shall directly see, the United States held this sum as trustee for the appellee. And the fact is equally immaterial in its legal effect, if this sum belonged to Louisiana, not in her own right, but was to go to her charged with a trust, to wit, to be applied by the State to specific purposes, expressly declared in the act of Congress under which the fund arises.

It is a very curious circumstance in this case, that the sum named by the appellant as barred by the statute is made up of two credits, entered on the books of the Treasury on May 8, 1879, one of which, to wit, $1,392.71, was credited as a "part payment on principal," whilst no part of the principal is due or matures until 1894; and the other item of the sum, to wit, $12,210, corresponds exactly in amount with a credit made, or rather held to be made, on interest which had not accrued. (See table in Appendix and letter of First Comptroller to the Clerk

of the Court of Claims, and letter of the Treasurer to the First Comptroller, also in Appendix hereto.)

The second question or proposition of the appellant is, Are the funds "of such a character that the just, admitted, and matured indebtedness of said State to the United States being interest on the bonds aforesaid cannot be set off against the same."

This proposition begs the question, and is an abject confession of the weakness of appellant's case.

The character of the alleged indebtedness is not an issue in this case. It is by no means "admitted" either in fact, or as "just." Nor is it proven. The case made is simply this, the United States as trustee has assumed without notice to the *cestui que trust* to credit this trust fund upon an alleged indebtedness of the *cestui que trust* on her own account to the trustee. There is nothing in the case cited. (Rice *v.* U. S., 122 U. S.) which will sustain such a proposition. *Per contra*, the principles upon which the judgment of the Court of Claims rests, and which judgment was affirmed without an opinion, is in entire accord with my proposition, that the statute does not begin to run until notice of the disavowal of the trust. It would be inexcusable to trespass argument on you upon so well settled a question.

Another assertion on behalf of the appellant merits a word of comment. It is that "the net proceeds of those lands are in the Treasury like any other money, and not as a specified fund, and can only be gotten out in payment of this claim by an appropriation of Congress, in the same manner that other claims against the Government are paid." In a certain sense this is true, because when money is once covered into the Treasury, whether rightfully and lawfully covered in or otherwise, it can only be drawn out by authority of an appropriation. It is true, therefore, that this money cannot be paid out without an

express appropriation, and in that sense is there "like any other money," but *non constat*, it was covered in without authority of law and in violation of law, and thus became and is there "like any other money," but unlawfully is in that condition in which an appropriation has become necessary that it may "be gotten out in payment of this claim." The very *gravamen* of our complaint is, that it has been unlawfully covered into the Treasury, and we have, therefore, resorted to this means whereby it "can only be gotten out."

That it is there unlawfully will be demonstrated before we conclude, for

OUR CONTENTION

is that both the United States and the State of Louisiana are trustees as to this fund, though for different uses.

THE SWAMP LAND INDEMNITY.

The United States is not a "donor," as is suggested by counsel, in the sense of granting a gratuity or making a gift. "A donation is a gift and gratuity and not a grant of land founded on a consideration," as is said by the Supreme Court in Forsythe *v.* Reynolds, 15 H. Unquestionably a good consideration moved the United States to make this grant. It was a grant in the interest of and to advance the "general welfare." Note the very language of the grant. "To enable the several States to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein," those made "unfit thereby for cultivation" were granted to the States (sec. 2479, R. S. of U. S.). By sections 2480 and 2481 Federal machinery is provided for determining the specific tracts or parcels of lands which come within this general grant. Then section 2482 further provides for the correction of errors made by the Government in the disposition of any of these lands between the grant in 1850 and the date of this enactment

(March 2d, 1855), and the indemnity for these errors was to be made by the Commissioner of the General Land Office with the approval of the Secretary of the Interior. Not only is all this necessarily to be done by Federal machinery, but sec. 2478 still further devolves the duty on the Commissioner of the General Land Office "to enforce and carry into execution, by appropriate regulations," these various provisions. The Commissioner of the General Land Office has by law exclusive jurisdiction in all matters "appertaining to the surveying and sale of the public lands of the United States," and power to "audit and settle all public accounts relating to the public lands." (See Baldwin *v.* Stark, 107 U. S., 465; Marquez *v.* Frisbie, 101 U. S., 473; Shepley *v.* Cowan, 91 U. S., 331).

Now the question is, can there be any doubt that these provisions constitute the Government of the United States a trustee of this fund?

There is no better definition of a trustee than the one laid down in Perry on Trusts, viz: "A person in whom some estate, interest, or *power* in or affecting property of any description is vested for the benefit of another." The act of 1850 carried the equitable title, but whilst the legal title remained in the United States other rights were over acquired under the laws of the United States, through errors of the Government, and the act of 1855 to remedy and to correct these errors by indemnity was to be carried out by Federal machinery, and this is clearly a "*power* affecting property vested for the benefit of another." "No particular form of words is required to create a trust" (4 Kent, 305). The court will decide from the general tenor and scope of the language used whether a trust arises or not. In this case there is a stated duty to be performed by the Government, in order to carry into effect the declared purpose of Congress; not merely a necessary duty, but one by law expressly devolved upon the Gov-

ernment, and until that duty is performed there was no remedy available to the *cestui que trust*, except a mandamus to put the machinery in motion, and a complete answer to an application for such a mandamus would be that the officer was using the force allowed by appropriations of Congress to the best advantage in the work, and with due regard to the demands and interests of the public service.

The repudiation of the trust must be clear and unequivocal. The knowledge of the repudiation must be brought home to the party to be affected by it, which in this case was the chief executive of the State of Louisiana: "The general rule is that when a trustee *unequivocally repudiates* the trust and claims to hold the estate as his own, and such repudiation and claim are brought to the knowledge of the *cestui que trust* in such manner that he is called upon to assert his rights, the statute of limitations will begin to run against him from the time such knowledge is brought home to him and not before." (U. S. *v.* Taylor, 104 U. S., 222, and cases cited. *Vide* also Sheidel *v.* Hermici, 120 U. S., 380.) No mere *ex parte* entry on the books of a trustee or on an obligation which he holds in his own possession could be a repudiation of a trust. The paid coupons are even shown *to be still held in the Treasury*, and there is no pretense of notice of application of the money. It is not claimed or pretended that this trust was repudiated, and nothing indicated that either the Governor of Louisiana, or any other official of that State, knew of either the allowance or credit of these two sums on May 8, 1879, of $12,210 and $1,392.71, and it is a very curious coincidence that is shown by the annexed table that the same amounts exactly, to wit, $12,210, were credited as interest which had not accrued, and $1,392.71 was credited as principal, which will mature in 1894 and not until then. (*Vide* the statement appended.)

Five Per Cent. Fund.

This fund arises under the act admitting the State of Louisiana into the Union of States, and by that very act it is in express terms impressed with the specific trust that it is to be "applied to laying out and constructing public roads and levees in the said State, as the Legislature thereof may designate."

This act is set out in the first section of the petition herein.

Clearly this was not a donation in the sense of a gift or gratuity. It was a fundamental provision based upon a good and lawful consideration, in the very compact by which the State was admitted into the Union. This very question came before the Supreme Court of Alabama, which held, in Long & Long *v.* Brown (4 Ala., 629), that the grant by Congress was not a donation, but the performance of a solemn obligation growing out of a compact with the State.

It has been repeatedly held that the grant of a franchise, *e. g.* to build a railroad, constituted a contract which the grantor cannot impair. Upon how much higher ground must stand the solemn obligation of two sovereignties embodied in a solemn compact between them, whereby the one having absolute control to divide and sell at its own will, binds itself to pay to the other a specific per cent. of all such sales.

The conclusion I would draw seems to be irresistible, viz: That the United States as to both of these funds, those arising from the Swamp Land indemnities and the Five Per Cents., bears the relation to the State of Louisiana of a trustee bound to pay over the proceeds.

If this is sound, then it follows as a corrolary that this obligation rests unimpaired until it is satisfied by an accounting, or until the trust is clearly and unequivocally repudiated and express notice thereof is brought home to the *cestui que trust.*

The Other Trust.

Returning now to the proposition, which seems to be conceded by counsel for the Government, viz., that the right of the State to these funds is itself impressed with a specific trust in the very acts of Congress granting them, I desire to submit a few observations.

Any party who is legally bound to another to account for the management and use and the proceeds of a fund is a trustee, but every trustee is not necessarily bound to account. The Supreme Court has repeatedly held that States and municipalities may be trustees, and this is a well established principle and rule of American law since the case of McDonough *v.* Murdock (15 Howard, 367).

Sovereignty cannot be sued except by its consent. When, therefore, a sovereign becomes a trustee it becomes so with an exemption from the usual liability to account. This is so in the very nature of the relations and in the nature of sovereignty, and the security for the trust and the faithful performance of the duty of the trustee rests upon what must ever be regarded as the surest and safest foundation—the honor and good faith of sovereigns. The Supreme Court treats the trust as resting upon the good faith of the States without liability to account, but none the less a trust; a trust reposed in the States, secured by the highest guarantee of sovereignty. The United States has consented to be sued in her own forum for a right growing out of an act of Congress or a contract, which is really the same thing, since it is only the political power of the Government which can authorize contracts, but the United States has not consented to be sued for an "accounting." The duty of accounting is devolved by statute on the Commissioner of the General Land Office. He has done his work in his own time, and we are to presume here that he has done it as soon as the means

under his control enabled him to, with due regard to the public service. But the proceeds have been misapplied in violation of an act of Congress, and we are seeking to recover them.

As we have already seen, the acts of Congress granting the swamp lands to the States and providing for the payment of the indemnities expressly and specifically provide that they shall be applied to purposes designated with certainty, and for uses which are particularly and definitely limited. Among the profession there cannot be a serious question that these conditions in the grant and the contract thereby created constitute an express trust. But counsel for the Government says "the Supreme Court has held that the Legislature of Iowa could divert the funds to other purposes than those named in the act of Congress, in the exercise of its discretion," and he contends that "the fund is, therefore, in effect the individual fund of the State." We expressly deny both the premise and the conclusion. The two cases of the Emigrant Co. *v.* County of Wright (97 U. S., 339), and County of Adams (100 U. S., 66,) are both from Iowa, and review contracts made by these counties under a statute of that State, with reference to the improvement and settlement of these lands. In the first case the court held that the act of the Legislature which provided a plan for the carrying out of the act of Congress by conveying the lands to the counties wherein they were respectively located, and providing for their improvment and settlement, together with the contracts made under the State legislation, "introduced a scheme *subversive* of the *trust* imposed upon the State by the act of Congress; that its effect was to devote the lands and proceeds thereof to purposes different from those which the original grant was intended to secure; that it threw off, or endeavored to throw off, all public responsibility in relation to the trust; and hence

that the scheme itself and the contract based upon it were void." But another case, the Adams County (100 U. S., 61), was appealed and this question reargued, and on page 67 the court reviews the State legislation and the views of the first decision, and says: "But a reconsideration of the subject has brought us to a contrary decision." Instead of this decision denying the trust and holding the fund to be in effect the individual fund of the State, we read it as expressly deciding that the grant was in trust; that the proceeds of the lands were to be applied to the purposes named in the act of Congress. The decision in Mills County *v.* R. R. Co. (107 U. S., 564) is to the same effect.

It is true that the court says that "room is left the State for the exercise of a large discretion," and also that "it is very questionable whether the security for the application of the proceeds thus pointed out does not rest upon the *good faith of the State*, and whether the State may not exercise its discretion in that behalf, without being liable to be called to account, and without affecting the titles to the lands disposed of." That the execution of a trust rests upon the good faith of a trustee is not unusual, and it is in nowise incompatible with the existence of a trust. The very essence and point of these three decisions, when we analyze them, is, that the trust consists in the obligation of the States in good faith to apply the proceeds for the accomplishment of the purposes set forth in the act of Congress, *but that the trust does not follow and adhere to the title* so as to affect or impair it, but follows the proceeds merely. This is exactly the view which the State Courts have taken of this act. The Supreme Court of Missouri says this act of Congress does not make "a property trust fastened by the terms of the grant upon the land itself, and following it into whose hands soever it may pass," but that "it is *a personal trust in the public*

faith of the State." (Dunklin County *v.* Dunklin County Court, 23 Mo., 456.)

To the same point is the case of Cooper *v.* Roberts (18 Howard, 173).

By a statute of Wisconsin it is provided that the proceeds arising from the sale of lands, under the act of Congress to grant to Arkansas and other States the swamp and overflowed lands, etc., shall be set apart under the "drainage-fund" act, to be expended by the county supervisor of said county for the drainage and reclamation of swamp and overflowed lands. The county being indebted to the State, the State treasurer withheld this fund and set it off as payment of the debt of the county to the State. The county brought this suit, and the court expressly holds that this obvious diversion would be in violation of the act of Congress. (State *ex rel.* Douglas *v.* Hasting, 11 Wisconsin, 452.)

We respectfully submit to the court that the following propositions are established:

1. That under the acts of Congress a trust is devolved upon the United States to ascertain, allow, and pay over the amounts due under these two statutes.

2. That under the same acts a trust attaches to the proceeds arising from these funds, and is devolved upon the States to apply them to the purposes declared by the provisions of the statutes.

3. That these trust funds thus arising cannot be applied to any debts or liability which the State may owe in its own right.

4. That the attempt to set off these trust funds against a debt of the State is in derogation of the trust and without the warrant of legal authority.

5. That the act of the Treasury Department, purporting to set off these funds against an alleged debt of the State, is in violation of the compact between the two sovereignties and impairs the obligation of a contract.

6. That the State of Louisiana is entitled to recover judgment for all such sums as have been thus misapplied.

We only wish to add that this record discloses the fact that a portion of these proceeds have been applied as a credit upon the principal of bonds not due for years to come.

Also, that other portions have been and are now held to be applied to interest which has not yet accrued.

And upon these facts we forbear comment.

WM. E. EARLE,
JAMES L. PUGH, JR.,
Att'ys for Appellee.

Rooms 39, 40, 41, and 42 Kellogg Building.

APPENDIX.

By consent the two petitions were consolidated and tried as one.

Statement of items in each, separately.

PETITION No. 15543.

From Five Per Cents	$36,439 69
" Swamp Land Indemnity	3,803 02
Total prayed for	40,242 71

This five per cent. fund is made up as follows, to wit:

May 8, 1879, cr. on interest	$12,210 00
" " " principal	1,392 71
June 8, 1882, " interest	63 47
Feb'y 7, 1884, " ~~principal~~ Interest	22,773 51
Total as above	36,439 69

This swamp indemnity is made up as follows, to wit:

March 26, 1886, cr. on interest	$302 32
" " " "	3,500 70
Total as above	3,803 02

(See Rec., pp. 6 and 7.)

PETITION No. 15777.

From swamp land indemnity	$3,330 00

This is made up as follows, to wit:

Sept. 9, 1886, cr. on interest	1,110 00
May 4, 1887, " "	489 59

(For these two credits see letters of Hon. First Comptroller, dated Sept. 22, '87, Jan. 5, 1888, and Jan. 6, 1888.)

May 2, 1887, cr. on interest	787 91
" " "	942 50
Total as above	3,330 00

The total amount credited is as follows:

Petition No. 15543	$40,242 71
" " 15777	3,330 00
Total credited is	43,572 71
The Treasury reply says there was credited "part payment of principal"	1,392 71
This would leave cr. on interest	42,180 00

But the reply of the Treasury to the Attorney General, dated Dec. 17, 1887, states that "The interest that accrued on the bonds held by the United States Treasurer for the benefit of various Indian tribes, to February 1, 1887, amounts to $29,415. In the letter of the First Comptroller to the Chief

Clerk of this Court, dated January 6, 1888, and also by the exhibit annexed thereto, to wit, a letter to the First Comptroller from the Treasurer of the United States, dated the same day, it appears that the total amount of interest due May 1, 1887, was...	29,970 00
As the last credit was made May 4, 1887, and, if it is true as stated, that the rest was credited on interest it was necessarily interest which had not accrued.....	$12,210

TREASURY DEPARTMENT,
FIRST COMPTROLLER'S OFFICE,
December 17, 1887.

Hon. A. H. GARLAND,
U. S. Attorney-General:

SIR: Your letter, dated 1st instant, addressed to the Secretary of the Treasury in relation to the case of The State of Louisiana *v.* United States, No. 15543 Court of Claims, has been referred to this office for report. In reply I have to state that the set-offs made by this office were made from time to time, commencing in May, 1879, and terminating May 2, 1887.

The amount of the set-offs is $41,973.12, and is made up from the following items, viz., $13,602.71, paid May 8, 1879, by warrant No. 892, as follows:

Interest on State stocks.....	$12,210 00
Part payment of principal.....	1,392 71
$63.47 paid June 8, 1882, warrant No. 1069; interest on State bonds.....	63 47
$22,773.51 paid February 7, 1884, warrant No. 418; interest on Indian Trust Fund bonds.....	22,773 51
Account of Indian Trust Fund bonds:	
Warrant No. 3913, paid March 26,1886.....	302 32
Warrant No. 3914, paid March 26, 1886.....	3,500 70
Warrant No. 2478, paid May 2, 1887.....	787 91
Warrant No. 2479, paid May 2, 1887.....	942 50

The interest that accrued on the bonds held by the United States Treasurer for the benefit of various Indian tribes to February 1, 1887, amounted to $29,415.

The amount that was applied as a set-off in part payment of principal is $1,392.71.

At the time the $1,392.71 was directed as a set-off the principal *had not matured, nor will any part thereof mature, until 1894.*

Very respectfully,

M. J. DURHAM,
Comptroller, W. L.,
By J. R. GARRISON,
Deputy Comptroller.

TREASURY DEPARTMENT,
FIRST COMPTROLLER'S OFFICE,
January 5, 1888.

TO THE CHIEF CLERK OF THE COURT OF CLAIMS:

SIR: This office gave the honorable United States Attorney-General, December 17th ultimo, an itemized statement showing the set-offs that had been made from time to time against the State of Lousiana, account interest due by said State, aggregating $41,973.12. I have now to report the following sums in addition to those reported in said letter of December 17 ultimo, viz., $1,110, and $489.59. These sums accrued to the State of Louisiana, account indemnity for swamp lands for States, and were covered into the United States Treasury to the credit of the State account of interest due on "Indian Trust Fund bonds."

It is desirable that this information be furnished both the plaintiff and defendant in the suit now pending in your court, the State of Louisiana *v.* The United States.

Very respectfully,

M. J. DURHAM,
Comptroller, W. L.,
By J. R. GARRISON,
Deputy Comptroller.

TREASURY DEPARTMENT,
FIRST COMPTROLLER'S OFFICE,
January 6, 1888.

To the CHIEF CLERK COURT OF CLAIMS,
Washington, D. C.:

SIR: Referring to my letter of the 5th instant in relation to certain amounts due the State of Louisiana, in which I report two sums, to wit, $1,110 and $489.59, arising from indemnity for swamp lands, in addition to the sums contained in my letter of December 17, 1887, I omitted to give the date of the two credits. I have now to state that the first named was made September 9, 1886, and the second was made May 4, 1887.

By official statement of the Treasurer of the United States, dated January 6, 1888, copy of which find enclosed herewith, it appears *that the total amount of interest* due on bonds of the State of Louisiana held by the Treasurer of the United States for the Indian Trust Fund from November 1, 1874, to *May 1, 1887*, is *$29,970;* since which date, up to November 1, 1887, the accrued interest due is $1,110.

As shown in letters from this office dated December 17, 1887, and January 5, 1888, the total amount directed to be carried to the credit of the State of Louisiana *on account of interest is $42,180*, and on account of principal, $1,392.71.

Respectfully yours,

M. J. DURHAM,
Comptroller, W. L.
By J. R. GARRISON,
Deputy Comptroller.

TREASURY OF THE UNITED STATES,
Washington, January 6, 1888.

To the FIRST COMPTROLLER,
Treasury Department:

SIR: I have the honor to inform you that there are coupons attached to $37,000 bonds of the State of Loui-